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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,477	06/03/2005	Toshiharu Kobayashi	P/2850-110	3344
2352 7590 10/10/2008 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER				
FOGARTY, CAITLIN ANNE				
ART UNIT		PAPER NUMBER		
1793				
MAIL DATE		DELIVERY MODE		
10/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/537,477

Applicant(s)

KOBAYASHI ET AL.

Examiner

CAITLIN FOGARTY

Art Unit

1793

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 9/24/2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Roy King/
Supervisory Patent Examiner, Art Unit 1793

Continuation of 11. does NOT place the application in condition for allowance because: the claims have not been amended and the Applicant's arguments are not persuasive. Therefore, the 35 U.S.C. 102/103 rejection and the nonstatutory obviousness-type double patenting rejection set forth in the 4/10/2008 Final Rejection are maintained

The Attachments A and B of Applicant's arguments filed 9/24/2008 are not in the form of a declaration and therefore will be considered as part of Applicant's arguments. Applicant argues that Cetel does not in any technical sense take into account the inclusion of Ru in the alloy since it provides not evidence or even discussion of any advantages to be obtained therefrom. However, as cited in the 4/10/2008 Final Rejection, p. 2 lines 29-36 of Cetel teach that the nickel based single crystal super alloy comprises 0-10% of one or more elements selected from the group consisting of group III, series 2 and 3 metals (Ru, Pd, Pt, Rh, Ir, Os). Applicant has not submitted factual evidence to exhibit the criticality of Ru in the instant invention.

Applicant also argues that the Cetel published patent (EP 0 848 071 B1) has a composition of Cr 0.4-175 wt% which does not overlap with the instant claimed range. However, the examiner relied on the original publication of Cetel (EP 0 848 071 A1) in the 4/10/2008 Final Rejection which discloses a composition of Cr of 0.4-2.9 wt% which overlaps with the composition of Cr recited in the instant invention.

Applicant submitted Attachment A to show that the Larson-Miller parameters of the alloys of the present invention are clearly greater than those of the alloys of Cetel. However, the Larson-Miller Parameters of the instant invention are only shown for one stress value (137 MPa). In addition, it is clear from Attachment A that the alloys of Cetel have similar Larson-Miller Parameters of about 50-53 as those of the instant invention shown in Table 1 of Applicant's arguments.

Applicant also argues, in regards to the nonstatutory obviousness-type rejection, that the claims of the present application recite "4.1-14.0 wt% Ru", whereas Koizumi claims "1.0-4.0 wt% Ru". However, the composition of 4.1 wt% Ru recited in the instant claims is very close and therefore is not distinct from the composition of "4.0 wt% Ru" disclosed in Koizumi. Furthermore, Applicant argues that the data of Table 1 and Attachment B within the arguments makes it clear that the creep rupture life of the alloy of the embodiments 1 to 14 is substantially longer than that of the alloy of the reference examples 1 to 6 of the present application, as well as the embodiment of Koizumi. However, it is clear from Table 1 of the arguments that the embodiment of Koizumi has a longer creep rupture life (412.30 h) than embodiments 1 (326.50 h) and 6 (400.00 h) of the present invention and therefore must be an acceptable creep rupture life for the present invention.